



Wayne Henry

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Vernal District Office
170 South 500 East
Vernal, Utah 84078-2799



IN REPLY REFER TO:
UTU-66354
UT08438

February 8, 1995

5/047/048

CERTIFIED MAIL
Return Receipt Requested
P 394 251 937

DECISION

Mr. Joseph LaStella	:	43 CFR 3809
P.O. Box 570	:	Establishment of a Record
Spanish Fork, UT 84660	:	of Noncompliance

A mining notice was received on February 9, 1987, by operator, Searle Brothers Construction, Inc., of Evanston, Wyoming, for testing placer gravel deposits on Sno-Ben #1-6 mining claims. A letter dated June 10, 1988, was sent to Mr. Bennett, one of the mining claimants of record, stating measures were necessary to reclaim the wash plant location on Sno-Ben #1 in order to move the wash plant to Sno-Ben #2. These reclamation measures included filling two water pits, leveling earthen ramps, removing a plastic liner, removing all trash, regrading to original contour, and reseeding all disturbed areas. Another notice was submitted on June 14, 1988, by Overlook Limited, Inc., for mining operations on Sno-Ben # 2.

A notice of noncompliance was issued on June 27, 1988, for failure to complete reclamation work on the wash plant area, failure to file a complete notice, and failure to wait 15 days prior to commencing mining activity prior to acceptance. Additional information was filed by Overlook Mining, Inc., but it did not address the items listed as insufficient on the June 27 notice of noncompliance. Another notice of noncompliance was issued on July 20, 1988. This notice of noncompliance was issued because mining activity continued prior to resolution of items listed in the June 27, 1988, notice of noncompliance.

A field inspection on August 3, 1988, revealed successful completion of earthwork on Sno-Ben #1; however, seeding was still necessary. A letter, dated November 16, 1988, from the Vernal District Manager to Mr. Bennett, indicated work had exceeded the area identified on the accepted notice. You, as site manager, submitted a notice on July 17, 1989.

A January 2, 1990, letter to you requested reclamation of all disturbances caused by you (filling in eight test pits, removing the trailer, reshaping disturbances to natural contour, reseeding, etc.) and an ammended notice to address existing disturbances not previously reviewed and accepted. This work was never completed

and therefore resulted in a notice of noncompliance being issued to you dated March 30, 1990. This letter was returned unclaimed. On April 30, 1990, another letter reiterated the decision, stating the reclamation should be completed within 30 days from receipt. The decision was resent again on August 6, 1990, requiring reclamation of the site. Another notice of noncompliance was issued on December 5, 1990. BLM law enforcement personnel were used to deliver the letter to you. On January 28, 1991, the Utah Division of Oil, Gas, and Mining directed you to reclaim the site no later than 60 days from that date. The removal of the trailer and associated waste was timely completed.

To date you have failed to reclaim the area disturbed by your operations under notice serialized as case UTU-66354. All mailed notices of noncompliance requiring reclamation were returned as unclaimed.

A record from noncompliance means that you will have to file a plan of operations and a 100-percent reclamation bond with the BLM for all mining activity in excess of casual use conducted on BLM administered lands Nationwide. (The Bureau has an automated system which identifies operators with records of noncompliance.) You have the right to appeal the establishment of the record of noncompliance and bond amount to the Utah State Director, Bureau of Land Management, in accordance with 43 CFR 3809.4. If you exercise this right, your appeal, accompanied by a statement of reasons and any arguments you wish to present which would justify reversal or modification of the decision, must be filed in writing at this office within 30 days after the date of this decision. This decision will remain in effect during appeal unless a written request for a stay is granted.

The State Director has determined that the duration of your record of noncompliance is 3 years. The duration will not begin until all outstanding reclamation work required in the notice of noncompliance, dated December 5, 1990, has been satisfactorily completed and a bond posted for the remainder of the operation. The bond amount required for your unreclaimed operation is \$14,000.00.

The decision regarding the duration of your record of noncompliance may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from the receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

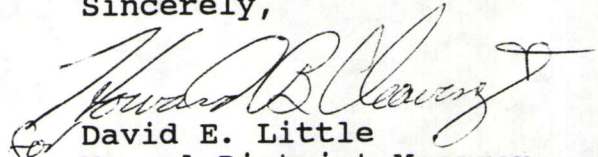
If you wish to file a petition (request) [pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993)] for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required

to show sufficient justification based on standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision, to the Interior Board of Land Appeals, and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on its merits,
- (3) The likelihood of immediate and irreparable harm if a stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Sincerely,


David E. Little
Vernal District Manager

Attachment:
Form 1842-1

cc: ✓ UDOGM (Tracking #S/047/048)
Utah State Office (UT-921)
Leo Snow (Prior Locator of Record, Sno-Ben #2 Claim UMC 282391)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL Within 30 days file a *Notice of Appeal* in the office which issued this decision (see 43 CFR Secs. 4.411 and 4.413). You may state your reasons for appealing, if you desire.
2. WHERE TO FILE
NOTICE OF APPEAL Utah State Director
Bureau of Land Management
Utah State Office
P.O. Box 45155
Salt Lake City, Utah 84145-0155

SOLICITOR
ALSO COPY TO Regional Solicitor
Department of Interior
Federal Building, Room 6201
Salt Lake City, Utah 84138
3. STATEMENT OF REASONS Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203 (see 43 CFR Sec. 4.412 and 4.413). If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary.

SOLICITOR
ALSO COPY TO Regional Solicitor
Department of Interior
Federal Building, Room 6201
Salt Lake City, Utah 84138
4. ADVERSE PARTIES Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (see 43 CFR Sec. 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington, D.C. 20240, instead of the Field or Regional Solicitor when appeals are taken from decisions of the Director (WO-100).
5. PROOF OF SERVICE Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR Sec. 4.401(c)(2)).

Unless these procedures are followed your appeal will be subject to dismissal (see 43 CFR Sec. 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (see 43 CFR Sec. 4.401(a)).